THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.24363 OF 2006

ORDER:

The petitioners herein suffered a money decree in O.S.No.90 of 1999 on the file of the Court of Senior Civil Judge, Nizamabad. The said decree was transmitted to the Court of the Senior Civil Judge, Bodhan, for execution at the instance of the decree-holder/respondent-Bank by sale of the mortgaged property. Pursuant to the order in Execution Petition (E.P.No.25 of 2004), the mortgaged property was sold on 18.8.2006. At that stage, the petitioners herein filed E.A.No.75 of 2006 with a prayer to stay confirmation of the sale alleging that the decree was an *ex parte* decree and that they are taking steps to get the same set aside. It was also contended that the Court of the Senior Civil Judge, Nizamabad, had no territorial jurisdiction and, therefore, the decree was a nullity. The said application was dismissed by the learned Senior Civil Judge, Bodhan, by order dated 6.11.2006, on merits.

While so, this writ petition is filed seeking a *writ of certiorari* to set aside the Judgment and Decree in O.S.No.90 of 1999 dated 7.11.2002 on the file of the Court of the Senior Civil Judge, Nizamabad and, consequently, direct the respondent-Bank to reschedule the decretal amount.

As a matter of fact, the order in E.A.No.75 of 2006 shows that the petitioners have already moved applications for setting aside the *ex parte* decree in the Court of the Senior Civil Judge, Nizamabad.

The only contention raised by the petitioners in this writ petition is that the order passed by the learned Senior Civil Judge, Bodhan, in E.A.No.75 of 2006 was an *ex parte* order and was in violation of the principles of natural justice. The said

allegation itself appears to be incorrect and without any basis, since the order dated 6.11.2006 is an order on merits, after hearing both the parties.

At any rate, if the petitioners are aggrieved on any ground whatsoever, it is always open to them to take appropriate proceedings by working out the appropriate remedy available under the Code of Civil Procedure before the appropriate forum. This writ petition under Article 226 of the Constitution of India is misconceived and cannot be entertained.

The writ petition is accordingly, dismissed. No costs.

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(G. ROHINI, J.)

27th November, 2006.
Issue CC in two days.

Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.24363 OF 2006

27th November, 2006.

Between:

Shabaz Zainab and another. .. Petitioners.

And

The Manager, State Bank of Hyderabad,
Main Branch, Nizamabad. .. Respondent.